

**United States Department of Labor
Employees' Compensation Appeals Board**

B.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Akron, OH, Employer**

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**Docket No. 06-1672
Issued: February 21, 2007**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 17, 2006 appellant filed a timely appeal of a June 14, 2006 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established a recurrence of disability on May 10 or June 12, 2004.

FACTUAL HISTORY

On November 4, 1979 appellant, then a 23-year-old clerk, filed a traumatic injury claim alleging that he sustained a back injury when he lifted a bag of mail on November 3, 1979. The Office accepted the claim for low back strain and a herniated L5-S1 disc secondary to spondylolisthesis with bilateral nerve root entrapment at L5-S1. Appellant underwent lumbar fusion surgery on June 11, 1980. He returned to work in a light-duty position performing modified duty. On December 2, 2002 the Office issued a schedule award for a 10 percent

permanent impairment to the left leg.¹ By decision dated August 18, 2005, the Office determined that appellant had a one percent right leg permanent impairment.²

Appellant submitted treatment notes from an attending physician, Dr. Paul Steurer. In a note dated April 1, 2004, Dr. Steurer reported increasing pain and soreness in appellant's lower back radiating into his legs. He indicated that a magnetic resonance imaging (MRI) scan would be performed. On May 11, 2004 Dr. Steurer stated that appellant had a flareup with worsening pain and soreness in his back and into his legs. He indicated that appellant would be kept out of work that week. Appellant was off work from May 10 to 14, 2004. In a note dated May 26, 2004, Dr. Steurer reported that he had reviewed the MRI scan and appellant "is getting into some further disc disease where he had his previous surgery. Appellant has scar tissue there but also getting into some foraminal stenosis." Dr. Steurer reported that appellant had worsening pain and would be evaluated by a surgeon.

Appellant stopped working on June 12, 2004. He filed a recurrence of disability claim (Form CA-2a) for the period May 10 to 14, 2004, and a CA-2a for the period commencing June 12, 2004. In a treatment note dated June 16, 2004, Dr. Steurer reported that appellant was having more pain and soreness across his lumbar spine with more radicular pain and numbness. He stated, "we are going to have to keep him out of work."

In a report dated September 9, 2004, Dr. Michael Smith, an orthopedic surgeon, indicated that the May 17, 2004 MRI scan "essentially is a normal MRI [scan] for a person that has had all the difficulty he has had" and did not show significant new stenosis. He stated that the MRI scan was positive for some postoperative healing and epidural scarring at his previous surgical site, otherwise there was no surgical pathology and appellant did not need surgery.

Dr. Steurer submitted a narrative report dated December 10, 2004 noting appellant had a long history of back pain and now had chronic back and leg pain. According to Dr. Steurer, appellant was unable to stand for a prolonged period or engage in repetitive bending or lifting. He noted that appellant also had cervical disc disease. Dr. Smith diagnosed status post anterior cervical fusion, status post laminectomy lumbar spine with stenosis and epidural scar and remote compression fracture L1. He concluded that appellant should be considered for disability retirement.

By decision dated October 3, 2005, the Office denied the claims for recurrences of disability as of May 11 and June 12, 2004. Appellant requested a hearing before an Office hearing representative, which was held on April 19, 2006. By decision dated June 14, 2006, the hearing representative affirmed the October 3, 2005 decision.

¹ The Board affirmed the schedule award determination. Docket No. 04-1447 (issued April 8, 2005).

² Appellant requested a hearing before an Office hearing representative; he did not request review by the Board on this appeal.

LEGAL PRECEDENT

The Office's regulation defines the term recurrence of disability as follows:

“Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.”³

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁴ To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.⁵

ANALYSIS

In the present case, appellant had been working in light-duty positions since his 1979 employment injury. He stopped working from May 10 to 14, 2004 and again on June 12, 2004. Appellant did not allege a change in the light-duty job. He contended that the disability commencing May 10 and June 12, 2004 was a recurrence of disability causally related to his November 3, 1979 back injury. To meet his burden of proof, however, appellant must submit reasoned medical evidence showing a change in the nature and extent of the employment-related condition causing disability for the period claimed. With respect to May 10 to 14, 2004, Dr. Steurer reported on May 11, 2004 that appellant had a flare-up of his back condition and would be kept off work. He did not discuss the causal relationship of appellant's disability for work with the November 3, 1979 employment injury.

³ 20 C.F.R. § 10.5(x).

⁴ *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ *Maurissa Mack*, 50 ECAB 498 (1999).

With respect to the work stoppage commencing June 12, 2004, the record again fails to contain a reasoned medical opinion on causal relationship between any disability and the accepted employment injury. In a June 16, 2004 note, Dr. Steurer reported that appellant continued to complain of back and radicular pain. He did not discuss causal relationship with the employment injury. Dr. Smith did not discuss a period of employment-related disability in his September 9, 2004 report. He reported, as did Dr. Steurer in a December 12, 2004 report, that the May 2004 MRI scan showed some epidural scar formation at the site of the prior surgery. Neither physician provided explanation or an opinion as to whether any current disability was causally related to the back surgery in 1980.

The Board finds that the medical evidence does not contain a reasoned medical opinion, based on a complete background, on the causal relationship between the claimed disability as of May 10 or June 12, 2004 and the 1979 employment injury or the authorized surgery. Accordingly, appellant did not meet his burden of proof to establish a recurrence of disability on May 10 or June 12, 2004.

CONCLUSION

Appellant did not meet his burden of proof to establish a recurrence of disability on May 10 or June 12, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 14, 2006 and October 3, 2005 are affirmed.

Issued: February 21, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board